

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

IN THE MATTER OF FEDERAL-	§	
STATE JOINT BOARD ON	§	CC DOCKET NO. 96-45, ET AL.
UNIVERSAL SERVICE, ET AL.	§	

REPLY COMMENTS OF THE STATE OF TEXAS

NOW COMES THE STATE OF TEXAS (State), by and through the Office of The Attorney General of Texas, Consumer Protection Division, Public Agency Representation Section, and files these its reply comments on the *Second Further Notice of Proposed Rulemaking* released December 13th, 2002 in FCC Order No. 02-329. These reply comments are timely filed pursuant to the Commission's subsequent order extending the deadlines in DA-03-203.

The Public Agency Representation Section of the Office of the Attorney General submits these reply comments as the representative of state agencies and state universities as consumers of telecommunications services in the State of Texas.

Governmental Entity Exemption

Understanding that the primary purpose of this *Second Further Notice* is to address the appropriate collection mechanism, the State of Texas will not address yet again the valid reasons why state governments should be exempted from any pass through of this assessment. We attach our initial comments on that subject for convenient reference, and continue to assert that the Commission should adopt such an exemption. We also note with approval both the Commission's decision to maintain the Centrex equivalency ratio, as expressed in FCC Order 03-58 in this docket, and the concern expressed by Commissioner Adelstein, in his Separate Statement, for the state budgeting process. We submit that this concern should extend to the most fundamental issue of

prohibiting the pass through of universal service regulatory assessments to a tax supported entity.

Connection-based Assessment

Based upon our review of the comments, the State of Texas continues to conclude that the capacity-based connection assessment is the most equitable alternative collection methodology presented. In particular, we support the reasoning espoused in the *Joint Comments of SBC Communications, Inc. and BellSouth Corporation*, in that this approach is the most competitively neutral and therefore gaming and market distortions are avoided. (See *Joint Comments* at p.14.) Both of the Commission's alternative methodologies are too easily manipulated, or are inequitable in their application, due to their reliance on revenue reporting, or the ability to manipulate the number of telephone numbers utilized. Both of those alternatives are also inequitable in their application to all types of telecommunications service providers as previously stated by the *Joint Commenters* and others.

We do support the concept that carriers make contributions based solely upon the capacity of the service they are actually providing. The State does have concerns that the measure of capacity be based upon the service sold to the customer, as opposed to the actual physical capacity of the lines, but beyond that concern finds this capacity-based mechanism to be most equitable. We also agree with the *Joint Commenters*, at page 13, that this methodology should greatly simplify the assessment process. We note that the comments of the United States Telecom Association and NRTA/OPASTCO also appear to generally support a connection-based -mechanism, for reasons which appear similar to our own.

Delay in Altering Methodology

Alternatively, should the Commission choose not to adopt a connection-based mechanism

at this time, we would accept the need for additional study and analysis of the results of the interim measures adopted by the Commission, as suggested in the comments of Verizon, and Consumers Union, Texas Office of Public Utility Counsel, *et al.* Although we do not oppose the Commission's taking action at this time, there is some utility in allowing the interim measures to operate for some period of time before fundamentally altering the collection mechanism. This would also allow time for the Commission staff to study the potential fiscal impact of the governmental exemption from the pass through of FUSF, which we continue to advocate.

We also continue to support the exemption of intra-state and international-only connections from the contribution base.

The State of Texas appreciates this opportunity to provide reply comments in this *Second Further Notice of Proposed Rulemaking*.

Respectfully submitted,

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